U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUN 2 6 2015

FILE #:
RECEIPT #:

IN RE: Applicant:
Beneficiary:

APPLICATION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF APPLICANT:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petition on September 17, 2014. The denial was appealed to the Administrative Appeals Office (AAO), who dismissed the appeal on March 19, 2015. The petitioner filed this motion to reopen on April 15, 2015.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2) as a member of the professions holding an advanced degree.

In dismissing the appeal, we determined that the petitioner did not establish that the beneficiary possessed the minimum educational requirements, or that the beneficiary possessed the required minimum experience required by the terms of the labor certification.

Under 8 C.F.R. § 103.5(a)(3), a motion to reconsider:

> must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The petitioner has provided no pertinent precedent decisions showing that our decision incorrectly applied the law to either grounds for the dismissal of the appeal. The petitioner's citation to *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), is inapplicable to this case. In *Snapnames*, the labor certification application specified an educational requirement of four years of college and a 'B.S. or foreign equivalent.' The alien had a three-year degree and membership in the Institute of Chartered Accountants of India (ICAI). USCIS had concluded that the alien did not qualify for EB-2 or EB-3 (due to the specific job requirements on the labor certification). The court upheld the USCIS determinations on EB-2 and EB-3 as a professional but reversed USCIS in the EB-3 skilled worker classification.

In reaching its conclusions, the federal district court in *Snapnames.com, Inc.* determined that 'B.S. or foreign equivalent' relates solely to the alien's educational background, precluding consideration of the alien's combined education and work experience. *Id.* at *11-13. Additionally, the court determined that the word 'equivalent' in the employer's educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer's intent. *Id.* at *14. In professional and advanced degree professional cases, however, where the alien is statutorily required to hold a bachelor's degree, the USCIS properly concluded that a single foreign degree or its equivalent is required. *Id.* at *17, 19. The court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Id.* at *7. Thus, the court concluded that where the plain language of those requirements does not support the petitioner's asserted intent, USCIS "does not err in applying the requirements as written." *Id.*

Our previous decision dismissing the appeal is supported by *Snapnames*, as the plain language of the labor certification states that the offered position requires a United States Master's degree of foreign equivalent degree and 12 months of experience, or alternatively a United States Bachelor's degree coupled with six years experience, and the beneficiary does not possess either a United States Master's or Bachelor's or foreign equivalent degree. Therefore, in line with *Snapnames*, the beneficiary does not qualify for classification as an advanced degree professional.

Nor does the petitioner cite any legal authority that would upset our other ground for dismissal. In the two paragraphs of the petitioner's brief devoted to the beneficiary's work history, the petitioner cites to no law or precedent decisions that suggest that we incorrectly applied the law.

In our previous decision, we found that the beneficiary possessed four years and nine months of progressive work experience, which is less than the six years of experience required by the terms of the labor certification. The petitioner now asserts that the beneficiary's experience working with the petitioner as a system analyst/administrator should be considered as qualifying experience for the offered position.

Representations made on the certified ETA Form 9089, which is signed by both the petitioner and the beneficiary under penalty of perjury, clearly indicate that the beneficiary's experience with the petitioner or experience in an alternate occupation cannot be used to qualify the beneficiary for the certified position.[1] Specifically, the petitioner indicates that questions J.19 and J.20, which ask about

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[1] 20 C.F.R. § 656.17 states:

> (h) *Job duties and requirements.* (1) The job opportunity's requirements, unless adequately documented as arising from business necessity, must be those normally required for the occupation
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> . . . . .
>
> (4)(i) Alternative experience requirements must be substantially equivalent to the primary requirements of the job opportunity for which certification is sought; and
>
> > (i) If the alien beneficiary already is employed by the employer, and the alien does not meet the primary job requirements and only potentially qualifies for the job by virtue of the employer's alternative requirements, certification will be denied unless the application states that any suitable combination of education, training, or experience is acceptable.
> >
> > (ii) *Actual minimum requirements.* DOL will evaluate the employer's actual minimum requirements in accordance with this paragraph (i).
>
> (1) The job requirements, as described, must represent the employer's actual minimum requirements for the job opportunity.
>
> (2) The employer must not have hired workers with less training or experience for jobs substantially comparable to that involved in the job opportunity.
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> (3) If the alien beneficiary already is employed by the employer, in considering whether the job requirements represent the employer's actual minimums, DOL will review the training and experience possessed by the alien beneficiary at the time of hiring by the employer, including as a contract

experience in an alternate occupation, are not applicable. In response to question J.21, which asks, "Did the alien gain any of the qualifying experience with the employer in a position substantially comparable to the job opportunity requested?," the petitioner answered "no." The petitioner indicates in response to question H.6 that 12 months of experience in the job offered is required and in response to question H.10 that experience in an alternate occupation is acceptable. In general, if the answer to question J.21 is "no", then the experience with the employer may be used by the beneficiary to qualify for the proffered position if the position was not substantially comparable[2] and the terms of the ETA Form 9089 at H.10 provide that applicants can qualify through an alternate occupation. Here, the beneficiary indicates in response to question K.1. that his position with the petitioner was as a system analyst/administrator, and the job duties are mostly the same duties as the position offered, including analysis, planning design, development, configuration, troubleshooting, administration and maintenance of networks, intranet and internet communications systems, and application peripherals. Therefore, the experience gained with the petitioner appears to be in the position offered as it is substantially comparable, performing the same job duties more than 50 percent of the time. According to DOL regulations, therefore, the petitioner cannot rely on this experience for the beneficiary to qualify for the proffered position.

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employee. The employer can not require domestic worker applicants to possess training and/or experience beyond what the alien possessed at the time of hire unless:

> (i) The alien gained the experience while working for the employer, including as a contract employee, in a position not substantially comparable to the position for which certification is being sought, or
> (ii) The employer can demonstrate that it is no longer feasible to train a worker to qualify for the position.

(4) In evaluating whether the alien beneficiary satisfies the employer's actual minimum requirements, DOL will not consider any education or training obtained by the alien beneficiary at the employer's expense unless the employer offers similar training to domestic worker applicants.

(5) For purposes of this paragraph (i):

> (i) The term ''employer'' means an entity with the same Federal Employer Identification Number (FEIN), provided it meets the definition of an employer at § 656.3.
> (ii) A ''substantially comparable'' job or position means a job or position requiring performance of the same job duties more than 50 percent of the time. This requirement can be documented by furnishing position descriptions, the percentage of time spent on the various duties, organization charts, and payroll records.

[2] A definition of "substantially comparable" is found at 20 C.F.R. § 656.17:

5) For purposes of this paragraph (i):

> . . .
> (ii) A ''substantially comparable'' job or position means a job or position requiring performance of the same job duties more than 50 percent of the time. This requirement can be documented by furnishing position descriptions, the percentage of time spent on the various duties, organization charts, and payroll records.

We further noted that the beneficiary's claimed experience with from 1995 through 2000 overlapped with the beneficiary's education at University from 1994 through 1998. The petitioner did not address this on motion.

Motions for the reconsideration of immigration proceedings are disfavored for the same reason as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reconsider a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the movant has not met that burden. The motion will be denied.

ORDER: The motion is denied. The petition remains denied.